

NOT FOR PUBLICATION

MAY 22 2006

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

NARINDER SINGH BAJAJ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-70769

Agency No. A78-642-748

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted May 15, 2006**

Before: B. FLETCHER, TROTT, and CALLAHAN, Circuit Judges.

Narinder Singh Bajaj, a native and citizen of India, petitions for review of the Board of Immigration Appeals' ("BIA") summary affirmance of an Immigration Judge's ("IJ") denial of his application for asylum and withholding of

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

removal. We lack jurisdiction to review the IJ's determination that petitioner is statutorily ineligible for asylum based on the one-year time bar. *See Ramadan v. Gonzales*, 427 F.3d 1218, 1221-22 (9th Cir. 2005).

We also lack jurisdiction to consider petitioner's Convention Against Torture claim because he failed to exhaust this claim before the BIA or the IJ. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

We have jurisdiction under 8 U.S.C. § 1252 to review the withholding of removal claim. We review for substantial evidence, *Li v. Ashcroft*, 378 F.3d 959, 962 (9th Cir. 2004), and grant the petition.

Substantial evidence does not support the IJ's adverse credibility finding because it was based on speculation, minor inconsistencies and omissions, and other improper factors which are not supported by the record. *See Chebchoub v. INS*, 257 F.3d 1038, 1043 (9th Cir. 2001); *see also Bandari v. INS*, 227 F.3d 1160, 1165-68 (9th Cir. 2000).

Accordingly, we grant the petition and remand for further proceedings to determine whether, accepting petitioner's testimony as credible, he is eligible for withholding of removal. *See INS v. Ventura*, 537 U.S. 12, 16 (2002) (per curiam).

PETITION FOR REVIEW DISMISSED in part; GRANTED and REMANDED in part.